

117TH CONGRESS  
1ST SESSION

# S. 1473

To enhance the consideration of human rights in arms exports.

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## IN THE SENATE OF THE UNITED STATES

APRIL 29, 2021

Mr. MENENDEZ (for himself, Mr. LEAHY, Mr. KAINES, Mr. COONS, Mrs. FEINSTEIN, Mrs. MURRAY, and Mr. SCHATZ) introduced the following bill; which was read twice and referred to the Committee on Foreign Relations

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# A BILL

To enhance the consideration of human rights in arms  
exports.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

**3 SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Safeguarding Human  
5       Rights in Arms Exports Act of 2021” or the “SAFE-  
6       GUARD Act of 2021”.

1     **SEC. 2. STATEMENT OF POLICY ON CONTROL OF DEFENSE**

2                 **EXPORTS AND PROTECTION OF HUMAN**  
3                 **RIGHTS.**

4     It is the policy of the United States that one of the  
5     purposes for controlling the export of defense articles and  
6     defense services to foreign countries is to prevent such ex-  
7     ports from being used in violation of international humani-  
8     tarian law or internationally recognized human rights, to  
9     require accountability for any such violations, and to en-  
10    sure that the sale, export, or transfer of such articles and  
11    services serves to encourage governments of foreign coun-  
12    tries to fully comply with international humanitarian law  
13    and observe internationally recognized human rights.

14    **SEC. 3. PROHIBITION OF ARMS SALES TO COUNTRIES COM-**

15                 **MITTING GENOCIDE OR WAR CRIMES.**

16    (a) **IN GENERAL.**—No sale, export, or transfer of de-  
17    fense articles or defense services may occur to any country  
18    if the Secretary of State has credible information that the  
19    government of such country has committed or is commit-  
20    ting genocide or violations of international humanitarian  
21    law after the date of the enactment of this Act.

22    (b) **EXCEPTION.**—The restriction under subsection  
23    (a) shall not apply if the Secretary of State certifies to  
24    the appropriate congressional committees that—

25                 (1) the government has adequately punished the  
26                 persons directly or indirectly responsible for such

1       acts through a credible, transparent, and effective  
2       judicial process;

3               (2) appropriate measures have been instituted  
4       to ensure that such acts will not recur; and

5               (3) other appropriate compensation or appro-  
6       priate compensatory measures have been or are  
7       being provided to the persons harmed by such acts.

8 **SEC. 4. MISUSE OF ARMS SALES FOR HUMAN RIGHTS**

9               **ABUSES.**

10       (a) IN GENERAL.—The President shall ensure that—

11               (1) the sale, export, or transfer of any defense  
12       article or defense service to a foreign country or  
13       international organization shall be pursuant to an  
14       agreement that the government of such country or  
15       such international organization will not use such ar-  
16       ticle or service in the commission, or to enable the  
17       commission, of a violation of international humani-  
18       tarian law or internationally recognized human  
19       rights;

20               (2) the United States Government has the legal  
21       right to require the return of any defense articles  
22       sold, exported, or transferred to a foreign country or  
23       international organization if the government of such  
24       country or such organization has used United  
25       States-origin defense articles in the commission, or

1 has enabled the commission, of a violation of inter-  
2 national humanitarian law or internationally recog-  
3 nized human rights; and

4 (3) if defense articles are sold, exported, or  
5 transferred to a foreign country in a manner in  
6 which the intended end user has not been identified  
7 at the unit level for human rights vetting, the agree-  
8 ment for such sale, export, or transfer includes a list  
9 of units ineligible to receive such articles, consistent  
10 with applicable provisions of United States law.

11 (b) ELIGIBILITY FOR DEFENSE SERVICES OR ARTI-  
12 CLES.—Section 3(a) of the Arms Export Control Act (22  
13 U.S.C. 2753(a)) is amended—

14 (1) in paragraph (1), by striking “and promote  
15 world peace” and inserting “, promote world peace,  
16 and is unlikely to contribute to human rights  
17 abuses”;

18 (2) in paragraph (3), by striking “; and” and  
19 inserting a semicolon;

20 (3) by redesignating paragraph (4) as para-  
21 graph (5); and

22 (4) by inserting after paragraph (3) the fol-  
23 lowing new paragraph:

24 “(4) the country or international organization  
25 has agreed not to use such article or service in the

1 commission, or to enable the commission, of a violation  
2 of international humanitarian law or internationally  
3 recognized human rights; and”.

4 (c) AUTHORIZED PURPOSE FOR MILITARY SALES.—  
5 Section 4 of the Arms Export Control Act (22 U.S.C.  
6 2754) is amended—

7 (1) by inserting “legitimate” before “internal  
8 security”; and

9 (2) by inserting “, provided that such defense  
10 articles and defense services will not present a significant  
11 risk of being used to violate international  
12 humanitarian law or internationally recognized  
13 human rights” after “such friendly countries”.

14 **SEC. 5. CONSIDERATION OF HUMAN RIGHTS AND DEMOCRATIZATION IN ARMS EXPORTS.**

16 (a) IN GENERAL.—In considering the sale, export, or  
17 transfer of defense articles and defense services to foreign  
18 countries, the Secretary of State shall—

19 (1) also consider the extent to which the government  
20 of the foreign country protects human rights and supports democratic institutions, including an independent judiciary; and

23 (2) ensure that the views and expertise of the  
24 Bureau of Democracy, Human Rights, and Labor of

the Department of State in connection with any sale,  
export, or transfer are fully taken into account.

3       (b) INSPECTOR GENERAL OVERSIGHT.—Not later  
4 than one year after the date of the enactment of this Act,  
5 and annually thereafter for four years, the Inspector Gen-  
6 eral of the Department of State shall submit to the appro-  
7 priate congressional committees a report on the implemen-  
8 tation of the requirement under subsection (a) during the  
9 preceding year.

10 SEC. 6. ENHANCEMENT OF CONGRESSIONAL OVERSIGHT  
11 OF HUMAN RIGHTS IN ARMS EXPORTS.

12       (a) IN GENERAL.—Any letter of offer to sell, or any  
13 application for a license to export or transfer, defense arti-  
14 cles or defense services controlled for export shall be sub-  
15 ject to the congressional review and disapproval require-  
16 ments, regardless of monetary value, of section 36 of the  
17 Arms Export Control Act (22 U.S.C. 2776) if the Sec-  
18 retary of State has credible information, with respect to  
19 a country to which the defense articles or defense services  
20 are proposed to be sold, exported, or transferred, that—

(1) the government of such country on or after the date of enactment of this Act has been deposed by a coup d'etat or decree in which the military played a decisive role, and a democratically elected

1       government has not taken office subsequent to the  
2       coup or decree; or

3               (2) a unit of the security forces of the govern-  
4       ment of such country—

5                       (A) has violated international humani-  
6       tarian law and has not been credibly inves-  
7       tigated and subjected to a credible and trans-  
8       parent judicial process addressing such allega-  
9       tion; or

10                      (B) has committed a gross violation of  
11       human rights, and has not been credibly inves-  
12       tigated and subjected to a credible and trans-  
13       parent judicial process addressing such allega-  
14       tion, including, *inter alia*—

15                               (i) torture or rape;  
16                               (ii) ethnic cleansing of civilians;  
17                               (iii) recruitment or use of child sol-  
18        diers;

19                               (iv) unjust or wrongful detention;  
20                               (v) the operation of, or effective con-  
21        trol or direction over, secret detention fa-  
22        cilities; or  
23                               (vi) extrajudicial killings, whether by  
24        military, police, or other security forces.

1           (b) INCLUSION OF INFORMATION IN HUMAN RIGHTS  
2 REPORT.—The Secretary of State shall also provide to the  
3 appropriate congressional committees the report described  
4 in section 502B(c) of the Foreign Assistance Act (22  
5 U.S.C. 2304(c)) biannually for the period of time specified  
6 in subsection (e) of this section regarding any country cov-  
7 ered under subsection (a).

8           (c) DURATION.—

9               (1) IN GENERAL.—With respect to a letter of  
10 offer to sell or an application for a license to sell,  
11 export, or transfer described in subsection (a), the  
12 letter or application shall be subject to the require-  
13 ments and procedures for congressional review and  
14 disapproval under section 36 of the Arms Export  
15 Control Act (22 U.S.C. 2776) for 2 years after the  
16 date on which the Secretary of State receives the in-  
17 formation described in subsection (a).

18               (2) TERMINATION.—

19                   (A) IN GENERAL.—With respect to such a  
20 letter or application, the enhanced congressional  
21 oversight under subsections (a) and paragraph  
22 (1) of this subsection shall terminate on the  
23 date on which the Secretary of State determines  
24 and so informs the appropriate congressional  
25 committees that—

9 (B) INFORMATION SUPPORTING DETER-  
10 MINATION.—The Secretary of State shall sub-  
11 mit to the appropriate congressional committees  
12 all information forming the basis for a deter-  
13 mination under subparagraph (A). The deter-  
14 mination shall, to the fullest extent possible, be  
15 unclassified, but may include a classified annex.

16 SEC. 7. LIMITATION ON SALES TO SECURITY FORCES IN-  
17 VOLVED IN GROSS VIOLATION OF HUMAN  
18 RIGHTS.

19       Section 620M(a) of the Foreign Assistance Act of  
20 1961 (23 U.S.C. 2378d(a)) is amended by striking “No  
21 assistance” and all that follows through “Arms Export  
22 Control Act” and inserting “No assistance, including the  
23 sale of defense articles or defense services, shall be fur-  
24 nished under this Act, the Arms Export Control Act, or

1 any other provision of law controlling the export or trans-  
2 fer of such articles and services”.

3 **SEC. 8. END USE MONITORING OF MISUSE OF ARMS IN**  
4 **HUMAN RIGHTS ABUSES.**

5 (a) END USE MONITORING.—Section 40A(a)(2)(B)  
6 of the Arms Export Control Act (22 U.S.C. 2785) is  
7 amended—

8 (1) in clause (i), by striking “; and” and insert-  
9 ing a semicolon;

10 (2) in clause (ii), by striking the period at the  
11 end and inserting “and;”; and

12 (3) by adding at the end the following new  
13 clause:

14 “(iii) such articles and services are  
15 not being used to violate international hu-  
16 manitarian law or internationally recog-  
17 nized human rights.”.

18 (b) REPORT.—The Secretary shall report to the ap-  
19 propriate congressional committees on the measures that  
20 will be taken, including any additional resources needed,  
21 to conduct an effective end-use monitoring program to ful-  
22 fill the requirement of clause (iii) of section 40A(a)(2)(B)  
23 of the Arms Export Control Act, as added by subsection  
24 (a)(3).

## 1 SEC. 9. HUMAN RIGHTS ELEMENTS IN AUXILIARY RE- 2 PORTS.

3       Section 36(b)(1) of the Arms Export Control Act (22  
4 U.S.C. 2776(b)(1)) is amended—

11                 “(Q) an assessment of the risk that such  
12                 defense articles or defense services will be used  
13                 in the commission of violations of international  
14                 humanitarian law or internationally recognized  
15                 human rights, and a description of any meas-  
16                 ures to be taken by the recipient government or  
17                 by the United States to prevent and monitor  
18                 any such use.”.

19 SEC. 10. REQUIREMENT FOR CERTAIN WEAPONS TO BE  
20 SUBJECT TO CONDITIONS AND END USE  
21 MONITORING AS FOREIGN MILITARY SALES.

Beginning on the date that is 180 days after the date of the enactment of this Act, the following defense articles may be sold, exported, or transferred only pursuant to section 36(b) of the Arms Export Control Act (22 U.S.C. 2776(b)):

1                   (1) Rockets, space launch vehicles, missiles,  
2       bombs (including equipment to enable precision  
3       guidance), torpedoes, depth charges, mines, and gre-  
4       nades.

5                   (2) Armored combat ground vehicles, including  
6       ground vehicles and trailers that are armed or are  
7       specially designed to be used as a firing or launch  
8       platform to deliver munitions or otherwise destroy or  
9       incapacitate targets, excluding any unarmed ground  
10      vehicles, regardless of origin or designation, manu-  
11      factured prior to 1956 and unmodified since 1955.

12                  (3) Aircraft, whether manned, unmanned, re-  
13      moteily piloted, or optionally piloted, as follows:

14                   (A) Bombers.

15                   (B) Fighters, fighter/bombers, and fixed-  
16      wing attack aircraft.

17                   (C) Turbofan- or turbojet-powered trainers  
18      used to train pilots for fighter, attack, or bomb-  
19      er aircraft.

20                   (D) Attack helicopters.

21                   (E) Unmanned aerial vehicles (UAVs) spe-  
22      cially designed to incorporate a defense article.

23                   (F) Aircraft specially designed to incor-  
24      porate a defense article for the purpose of per-

1 forming an intelligence, surveillance, and recon-  
2 naissance function.

3 (G) Aircraft specially designed to incor-  
4 porate a defense article for the purpose of per-  
5 forming an electronic warfare function, airborne  
6 warning and control aircraft, or aircraft spe-  
7 cially designed to incorporate a defense article  
8 for the purpose of performing a command, con-  
9 trol, and communications function.

10 **SEC. 11. DEFINITIONS.**

11 In this Act:

12 (1) The term “appropriate congressional com-  
13 mittees” means—

14 (A) the Committee on Foreign Relations  
15 and the Committee on Appropriations of the  
16 Senate; and

17 (B) the Committee on Foreign Affairs and  
18 the Committee on Appropriations of the House  
19 of Representatives.

20 (2) The terms “defense article” and “defense  
21 service” have the same meanings given the terms in  
22 section 47 of the Arms Export Control Act (22  
23 U.S.C. 2794).

